REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

IZONE TECHNOLOGIES PHILIPPINES,
Respondent.

CTA EB NO. 2295
(CTA Case No. 8696)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, *and*
CUI-DAVID, *JJ.*

Promulgated:
MAY 05 2022 4:10 pm

x - x

DECISION

BACORRO-VILLENA, J.:

Before the Court *En Banc* is a Petition for Review[1] pursuant to Section 3(b)[2], Rule 8 of the Revised Rules of the Court of Tax Appeals,

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[1] Filed *via* email on 03 August 2020, *Rollo*, pp. 5-44, with annexes.

[2] **SEC. 3**. *Who may appeal; period to file petition.* —

...

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review

(**RRCTA**), filed by petitioner Commissioner of Internal Revenue (**petitioner/CIR**). He seeks the reversal of the Amended Decision dated 18 October 2019[3] (**Amended Decision**) and the Resolution dated 13 May 2020[4] (**Assailed Resolution**), and the reinstatement of the Decision dated 29 April 2019[5] (**Original Decision**), respectively, of the Court's Special First Division[6] in CTA Case No. 8696, entitled *Izone Technologies Philippines v. Commissioner of Internal Revenue.*

PARTIES OF THE CASE

Petitioner Commissioner of Internal Revenue (**petitioner/CIR**) is the head of the Bureau of Internal Revenue (**BIR**), who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (**NIRC**) of 1997, as amended, or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On the other hand, respondent Izone Technologies Philippines (**respondent/ITP**) is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with office address at Suite 3004, 30/F Antel Global Corporate Center, Julia Vargas Ave., Ortigas, Pasig City, Metro Manila.[7]

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within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

3 Division Docket, Volume II, pp. 1289-1301.

4 Id., pp. 1325-1329.

5 Id., pp. 1187-1214.

6 The Amended Decision dated 18 October 2019 and the Assailed Resolution dated 13 May 2020 were penned by Associate Justice Cielito N. Mindaro-Grulla, with Presiding Justice Roman G. Del Rosario and Associate Justice Erlinda P. Uy, concurring. The Original Decision dated 29 April 2019 was penned by Associate Justice Cielito N. Mindaro-Grulla, with Associate Justice Erlinda P. Uy, concurring, and Presiding Justice Roman G. Del Rosario, dissenting.

7 Paragraph 1, Facts, Amended Pre-Trial Order, Division Docket, Volume II, pp. 1087-1088.

FACTS OF THE CASE

Respondent received a Letter of Authority (**LOA**) from the BIR for the purpose of investigating its tax liabilities for the taxable year (**TY**) 2008.[8]

Subsequently, the BIR issued a Preliminary Assessment Notice (**PAN**) dated 26 December 2011, which respondent received on 09 January 2012.[9] Respondent then sent a Letter dated 17 February 2012[10] to the BIR and submitted its supporting documents.

On 10 April 2012, respondent received a Letter dated 19 March 2012[11], signed by the Officer-in-Charge Regional Director of BIR Revenue Region No. 7, Jonas DP. Amora (**OIC-RD Amora**), informing it that the BIR has issued against it the Final Assessment Notice (**FAN**) and Formal Letter of Demand (**FLD**). The four (4) FANs[12] and FLD[13] with Details of Discrepancies[14] assessed respondent for alleged deficiency Expanded Withholding Tax (**EWT**) in the amount of ₱658,572.69, deficiency Documentary Stamp Tax (**DST**) in the amount of ₱139,445.54, deficiency Fringe Benefits Tax (**FBT**) in the amount of ₱195,199.14, and compromise penalty in the amount of ₱12,000.00, totaling ₱1,005,217.37, for TY 2008, broken down as follows:

Tax Type	Basic Tax	Surcharge	Interest	Compromise Penalty	Total
EWT	₱408,807.88	₱-	₱249,764.81	₱-	₱658,572.69
DST	4,544,073.12	18,689.00	46,000.54	-	139,445.54
FBT	6,504.70	-	69,763.07	-	195,199.14
Non-/Late filing/ payment of DST	-	-	-	12,000.00	12,000.00
Total	**₱608,999.95**	**₱18,689.00**	**₱365,528.42**	**₱12,000.00**	**₱1,005,217.37**

8 Paragraph 3, id., p. 1088.
9 Paragraph 4, id.
10 Exhibit "P-1", id., Volume I, p. 408.
11 Exhibit "P-2", id., p. 409.
12 Exhibits "P-3" to "P-6", id., pp. 410-413.
13 Exhibit "P-7", id., pp. 414-415.
14 Exhibit "P-8", id., p. 416.

On 12 April 2012, respondent protested the FANs and the FLD.[15]

Respondent then sent letters dated 13 September 2012 and 11 January 2013 to petitioner to follow up on its protest.[16] Petitioner, however, failed to reply thereto.

On 23 July 2013, respondent received information that its account at Banco De Oro (**BDO**) was placed under garnishment when the bank received a Notice of Garnishment dated 23 July 2013.[17] Respondent then deemed the order of garnishment as a denial of its protest. Thus, on 15 August 2013, it filed its prior Petition for Review before the First Division to appeal the denial of its protest.[18]

Subsequently, on 25 September 2013, respondent filed a "Motion for the Suspension of the Collection of Tax and Motion to Lift the Order of Distraint and Levy" (**Motion for Suspension**).[19]

During the hearing on the Motion for Suspension held on 22 November 2013, respondent presented its Chief Accountant, Jennifer Villareal (**Villareal**) as its witness.[20]

Within the extended time granted by the First Division,[21] petitioner filed his Answer[22] on 22 November 2013, interposing the following special and affirmative defenses: (1) the First Division has no jurisdiction over the Petition for Review as it was filed beyond the 180-day period provided under the provisions of Section 228[23] of the NIRC of 1997, as amended; (2) the assessment has become final and incontestable; and, (3) the Notice of Garnishment is in fact a preliminary step towards the collection of a delinquent tax due to the government and is not the Final Decision on Disputed Assessment (**FDDA**).

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15 Exhibits "P-9" and "P-10", id., pp. 417-418.
16 Exhibits "P-11" and "P-12", id., pp. 419-421.
17 Exhibit "P-13", id., p. 422.
18 Id., pp. 14-64, with annexes.
19 Id., pp. 69-74.
20 See Minutes of the Hearing dated 22 November 2013, id., pp. 218-221.
21 See Order dated 26 September 2013 and Resolution dated 07 November 2013, id., pp. 81 and 88, respectively.
22 Id., pp. 222-225.
23 **SEC. 228**. *Protesting of Assessment.*

On 27 November 2013, respondent filed its "Formal Offer of Evidence for the Motion for the Suspension of the Collection of Tax and Motion to Lift the Order of Distraint and Levy"[24] (**FOE on the Motion for Suspension**), consisting of Exhibits "P-1" to "P-67-1", inclusive of sub-markings. Petitioner filed his Comment/Opposition[25] thereto on 10 December 2013.

In the Resolution dated 20 March 2014[26], the First Division admitted respondent's exhibits *except* for Exhibit "P-38"[27], for failure to correspond to the document found in the records; Exhibit "P-64"[28], for failure to submit the original for comparison and for not being identified during trial; and, Exhibits "P-36", "P-37", "P-41", "P-42", "P-43", "P-44", "P-45", "P-47", "P-48", "P-49", "P-50", "P-51", "P-54", "P-55", "P-56", "P-57", "P-58", "P-60", "P-61", "P-62", "P-63", "P-65", and "P-66"[29], for not being identified during trial.

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24 Id., pp. 238-249.
25 Id., pp. 555-556.
26 Id., pp. 561-563.
27 Official Receipt No. 3873 dated 30 April 2008 issued by Siguion Reyna Montecillo & Ongsiako to respondent.
28 Official Receipt No. 5112 dated 06 February 2009 issued by Siguion Reyna Montecillo & Ongsiako to respondent.
29

Exhibit No.	Description
"P-36"	Official Receipt No. 3383 dated 24 January 2008 issued by Siguion Reyna Montecillo & Ongsiako to respondent.
"P-37"	Official Receipt No. 3553 dated 29 February 2008 issued by Siguion Reyna Montecillo & Ongsiako to respondent.
"P-41"	Official Receipt No. 3833 dated 30 April 2008 issued by Siguion Reyna Montecillo & Ongsiako to respondent.
"P-42"	Official Receipt No. 4036 dated 17 June 2008 issued by Siguion Reyna Montecillo & Ongsiako to respondent.
"P-43"	Official Receipt No. 4074 dated 25 June 2008 issued by Siguion Reyna Montecillo & Ongsiako to respondent.
"P-44"	Official Receipt No. 5929 dated 01 July 2008 issued by Siguion Reyna Montecillo & Ongsiako to respondent.
"P-45"	Official Receipt No. 4508 dated 16 September 2008 issued by Siguion Reyna Montecillo & Ongsiako to respondent.
"P-47"	Official Receipt No. 4775 dated 14 November 2008 issued by Siguion Reyna Montecillo & Ongsiako to respondent.
"P-48"	Official Receipt No. 4935 dated 23 December 2008 issued by Siguion Reyna Montecillo & Ongsiako to respondent.
"P-49"	Official Receipt No. 67289 dated 24 January 2008 issued by Siguion Reyna Montecillo & Ongsiako to respondent.
"P-50"	Official Receipt No. 68075 dated 08 August 2008 issued by Siguion Reyna Montecillo & Ongsiako to respondent.
"P-51"	Official Receipt No. 67424 dated 29 February 2008 issued by Siguion Reyna Montecillo & Ongsiako to respondent.
"P-54"	Official Receipt No. 67652 dated 30 April 2008 issued by Siguion Reyna Montecillo & Ongsiako to respondent.

On 22 April 2014, respondent filed *via* registered mail a "Partial Motion for Reconsideration"[30] (**First MPR**), asking the First Division to reconsider the denial of Exhibits "P-36", "P-37", "P-38", "P-41", "P-42", "P-43", "P-44", "P-45", "P-47", "P-48", "P-49", "P-50", "P-51", "P-54", "P-55", "P-56", "P-57", "P-58", "P-60", "P-61", "P-62", "P-63", "P-65", and "P-66". In the Resolution dated 08 July 2014[31], the First Division partially granted respondent's First MPR and set a hearing on 02 September 2014 for the presentation and identification of the denied exhibits.

On 23 September 2014, respondent filed an "Amended Formal Offer of Evidence for the Previously Denied Exhibits of [Respondent]"[32] (**Amended FOE on the Motion for Suspension**). In the Resolution dated 13 November 2014[33], the First Division admitted Exhibits "P-35", "P-40", "P-62", "P-66", and "P-66-1", but still denied the admission of Exhibits "P-36", "P-37", "P-41", "P-42", "P-43", "P-44", "P-46", "P-47", "P-48", "P-49", "P-50", "P-53", "P-54", "P-55", "P-56", "P-57", "P-59", "P-60", "P-61", "P-63", and "P-65", for failure to submit the duly marked exhibits.

On 04 December 2014, respondent filed *via* registered mail another "Partial Motion for Reconsideration"[34] (**Second MPR**), praying

"P-55"	Official Receipt No. 67888 dated 25 June 2008 issued by Siguion Reyna Montecillo & Ongsiako to respondent.
"P-56"	Official Receipt No. 67860 dated 17 June 2008 issued by Siguion Reyna Montecillo & Ongsiako to respondent.
"P-57"	Official Receipt No. 4326 dated 08 August 2008 issued by Siguion Reyna Montecillo & Ongsiako to respondent.
"P-58"	Official Receipt No. 68217 dated 16 September 2008 issued by Siguion Reyna Montecillo & Ongsiako to respondent.
"P-60"	Official Receipt No. 68401 dated 14 November 2008 issued by Siguion Reyna Montecillo & Ongsiako to respondent.
"P-61"	Official Receipt No. 68526 dated 23 December 2008 issued by Siguion Reyna Montecillo & Ongsiako to respondent.
"P-62"	Official Receipt No. 68689 dated 06 February 2009 issued by Siguion Reyna Montecillo & Ongsiako to respondent.
"P-63"	Bill No. 7485 dated 10 February 2009 issued by Siguion Reyna Montecillo & Ongsiako to respondent.
"P-65"	Bill No. 7322 dated 30 January 2009 issued by Siguion Reyna Montecillo & Ongsiako to respondent.
"P-66"	Invoice No. 12377 dated 14 April 2008 issued by Deloitte (Manabat Delgado Amper & Co.) to respondent.

30 Division Docket, Volume I, pp. 585-592.
31 Id., pp. 606-608.
32 Id., Volume II, pp. 775-786.
33 Id., pp. 860-861.
34 Id., pp. 871-879.

for the admission of Exhibits "P-36", "P-37", "P-41", "P-42", "P-43", "P-44", "P-46", "P-47", "P-48", "P-49", "P-50", "P-53", "P-54", "P-55", "P-56", "P-57", "P-59", "P-60", "P-61", "P-63" and "P-65". In the Resolution dated 08 April 2015[35], the First Division denied respondent's Second MPR for lack of merit.

At the hearing on 26 May 2015 for the initial presentation of petitioner's counter evidence on respondent's Motion for Suspension, petitioner's counsel manifested that he will no longer present any contrary evidence.[36] Thus, the First Division gave the parties fifteen (15) days, or until 10 June 2015, within which to file their respective memoranda.[37]

Petitioner filed his "Memorandum for the [Petitioner] (On the opposition to the Motion of the [Respondent] for Suspension of Collection of Taxes and Motion to Lift the Order of Distraint and Levy)"[38] on 11 June 2015, while respondent filed *via* registered mail on 15 June 2015 its Manifestation[39], stating that it is adopting its Petition for Review and Motion for Suspension, together with their Annexes/Exhibits as its Memorandum. Accordingly, on 07 July 2015, the First Division declared respondent's Motion for Suspension submitted for resolution.[40]

In the Resolution dated 09 September 2015[41], the First Division denied respondent's Motion for Suspension. Thereafter, respondent filed its Pre-Trial Brief[42] on 12 October 2015; while petitioner filed his Pre-Trial Brief[43] on 09 February 2016.

During the pre-trial conference held on 11 February 2016[44], respondent's counsel manifested that respondent is adopting its witness Villareal's testimony given at the hearing on the Motion for

35 Id., pp. 885-887.
36 See Resolution dated 26 May 2015, id., p. 891.
37 Id.
38 Id., pp. 892-894.
39 Id., pp. 895-899.
40 See Resolution dated 07 July 2015, id., p. 902.
41 Id., pp. 905-912.
42 Id., pp. 913-919.
43 Id., pp. 932-936.
44 See Minutes of the Hearing dated 11 February 2016, id., pp. 940-944.

Suspension.[45] The First Division then gave respondent's counsel until 26 February 2016 within which to submit a Joint Stipulation of Facts and Issues (**JSFI**), to be jointly filed and signed with petitioner's counsel.[46]

However, respondent's counsel failed to submit a JSFI and the First Division directed her to show cause for her non-compliance.[47] In the Resolution dated 29 June 2016[48], the First Division noted respondent's Manifestation/Compliance[49], explaining why its counsel was not able to submit a JSFI and deemed the parties to have waived their right to enter into admissions and stipulations of facts.

On 26 July 2016, the First Division issued a Pre-Trial Order[50] which gave the parties a period of five (5) days from receipt thereof to file the appropriate motion to correct and amend the Pre-Trial Order if warranted.

On 10 August 2016, respondent filed *via* registered mail a "Manifestation and Motion for Correction of Pre-Trial Order"[51] (**Manifestation with Motion to Correct**), asking that due corrections be made in the Pre-Trial Order to make it accurate and to conform to the records. The First Division noted respondent's Manifestation with Motion to Correct *per* Resolution dated 09 September 2016.[52]

During the hearing on 11 October 2016, petitioner's counsel failed to appear and respondent's counsel moved that the presentation of petitioner's evidence be considered waived since no motion for postponement was filed.[53] The First Division granted respondent's motion and the parties were given a period of thirty (30) days, or until 10 November 2016, within which to file their respective memoranda.[54]

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45 See Resolution dated 11 February 2016, id., pp. 948-950.
46 Id.
47 See Resolution dated 17 May 2016, id., pp. 1015-1016.
48 Id., pp. 1027-1028.
49 Filed on 31 May 2016, id., pp. 1020-1024.
50 Id., pp. 1031-1045.
51 Id., pp. 1046-1051.
52 Id., p. 1055.
53 See Order dated 11 October 2016, pp. 1058-1059.
54 Id.

On 04 November 2016, petitioner filed a Motion for Reconsideration[55] of the Order dated 11 October 2016[56] (**MR on the 11 October 2016 Order**), asking the First Division to reconsider its Order made in open court and allow petitioner's witness to appear before the Court on 29 November 2016, as indicated in the Pre-Trial Order. Respondent filed its Comment[57] thereto on 23 January 2017.

Meanwhile, in the Resolution dated 16 January 2017[58], the First Division partially granted respondent's Motion for Correction of Pre-Trial Order. Consequently on 27 January 2017, it issued the Amended Pre-Trial Order.[59]

On 02 February 2017, respondent filed *via* registered mail its own "Partial Motion for Reconsideration"[60] of the Resolution dated 16 January 2017 (**MPR on the 16 January 2017 Resolution**), asking the First Division to correct the date of its Protest Letter (mentioned in the Pre-Trial Order). Petitioner, however, failed to file a comment thereto despite due notice.[61]

In the Resolution dated 19 April 2017[62], the First Division granted petitioner's MR on the 11 October 2016 Order and set the case for initial presentation of petitioner's evidence on 06 June 2017.

During the hearing on 06 June 2017, petitioner's counsel manifested that his witness was unavailable and moved for a resetting.[63] The First Division granted the same subject to the condition that petitioner would be presenting his two (2) witnesses on the next hearing and that in the event they would not be presented, their presentation will be deemed waived.[64]

55 Id., pp. 1061-1063.
56 Supra at note 53.
57 Division Docket, Volume II, pp. 1104-1108.
58 Id., pp. 1077-1082.
59 Id., pp. 1087-1103.
60 Id., pp. 1113-1117.
61 *Per* Records Verification dated 13 July 2017, id., p. 1124.
62 Id., pp. 1121-1123.
63 See Order dated 06 June 2017, id., p. 1123-C.
64 Id.

Later, in the Resolution dated 06 December 2017[65], the First Division denied respondent's MPR on the 16 January 2017 Resolution for lack of merit.

During the hearing on 22 February 2018 for the presentation of petitioner's evidence, petitioner's counsel failed to appear despite due notice.[66] Respondent then moved for the waiver of petitioner's presentation of witness on the ground of the absence of petitioner's counsel and his witness. The First Division granted the same and the parties were directed to file their respective memoranda.[67]

Respondent filed *via* registered mail its "Memorandum of Arguments"[68] on 26 March 2018. On the other hand, after being granted an extension of time[69], petitioner filed his Memorandum[70] on 24 April 2018. In the Resolution dated 30 April 2018[71], the prior Petition for Review was declared submitted for decision.

On 03 May 2018, respondent filed *via* registered mail a "Manifestation re Submission of Originally Marked Documents"[72], which was later noted by the Special First Division.[73]

In the Original Decision dated 29 April 2019[74], the Special First Division partially granted respondent's Petition for Review. The deficiency FBT assessment in the amount of ₱195,199.14 was cancelled and set aside while the deficieny EWT and DST assessments were upheld. The dispositive portion thereof reads:

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65 Id., pp. 1131-1132.
66 See Order dated 22 February 2018, id., pp. 1135-1136.
67 Id.
68 Id., pp. 1144-1162, with annex.
69 See Order dated 02 April 2018, id., p. 1142.
70 Id., pp. 1164-1172.
71 Id., p. 1175.
72 Id., pp. 1176-1180.
73 See Resolution dated 14 February 2019, id., pp. 1183-1184; The First Division was reconstituted after the issuance of CTA Administrative Circular No. 02-18 dated 18 September 2018 entitled "Reorganizing the Three (3) Divisions of the Court".
74 Supra at note 5.

...

WHEREFORE, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. The assessment issued by [petitioner] against [respondent] for TY 2008 covering deficiency FBT in the amount of ₱195,199.14 is **CANCELLED and SET ASIDE** while the deficiency EWT and DST assessments are **UPHELD**.

Accordingly, [respondent] is **ORDERED TO PAY** [petitioner] the amount of **TWO MILLION FIVE HUNDRED THIRTY-FOUR THOUSAND TWO HUNDRED EIGHTY-FOUR PESOS AND NINETY-TWO CENTAVOS (₱2,534,284.92)** representing basic deficiency EWT and DST for TY 2008, inclusive of the twenty-five percent (25%) surcharge, twenty percent (20%) deficiency interest and 20% delinquency interest imposed under Sections 248(A)(3), 249(B) and (C) of the NIRC of 1997, as amended, respectively, computed until December 31, 2017, as shown below:

	EWT	DST	Total
Basic Tax	₱408,807.88	₱74,756.00	₱483,563.88
25% Surcharge	102,201.97	18,689.00	120,890.97
20% Deficiency Interest:			
01/16/2009 to 02/13/2012 (₱408,807.88 x 20% x 1,124/365 days)	251,780.85		251,780.85
01/06/2009 to 02/13/2012 (₱74,756.00 x 20% x 1,134/365 days)		46,451.13	46,451.13
Total Amount Due, February 13, 2012	**₱762,790.70**	**₱139,896.13**	**₱902,686.83**
Deficiency interest (02/14/2012 to 12/31/2017):			
(P408,807.88 x 20% x 2,148/365 days)	481,161.27		481,161.27
(P74,756.00 x 20% x 2,148/365 days)		87,986.79	87,986.79
Delinquency interest (02/14/2012 to 12/31/2017):			
(P762,790.70 x 20% x 2,148/365 days)	897,794.20		897,794.20
(P139,896.13 x 20% x 2,148/365 days)		164,655.83	164,655.83
Total Amount Due	**₱2,141,746.17**	**₱392,538.75**	**₱2,534,284.92**

In addition, [respondent] is **ORDERED TO PAY** delinquency interest at the rate of twelve percent (12%) per annum on the unpaid EWT and DST of ₱762,790.70 and ₱139,896.13, respectively, totaling ₱902,686.83 as of February 13, 2012, as determined above, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN) Law, and as implemented by RR No. 21-2018.

SO ORDERED.[75]

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[75] Citation omitted and emphasis in the original text.

Aggrieved, petitioner filed his "Motion for Partial Reconsideration (Decision dated 29 April 2019)"[76] (**MPR on the Original Decision**) on the above Decision on 22 May 2019, with respondent's Comment/Opposition[77] thereto filed on 21 June 2019. Respondent likewise filed its own Motion for Reconsideration[78] (**MR on the Original Decision**) on 24 May 2019, without petitioner's comment despite due notice.[79]

In the Amended Decision dated 18 October 2019[80], the Special First Division denied petitioner's MPR and granted respondent's MR, respectively, on the same Original Decision. The dispositive portion thereof reads:

> ...
>
> **WHEREFORE**, premises considered, [petitioner's] **Motion for Partial Reconsideration (Decision dated 29 April 2019)** is **DENIED**, while [respondent's] **Motion for Reconsideration** is **GRANTED**. Accordingly, the dispositive portion of this Court's Decision dated April 29, 2019, is amended to read as follows:
>
>> **WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the assessments issued by [petitioner] against [respondent] for deficiency expanded withholding tax, deficiency documentary stamp tax, fringe benefits tax and compromise penalty for the taxable year 2008 are **CANCELLED** and **WITHDRAWN** for violation of [respondent's] right to due process.
>>
>> **SO ORDERED.**
>
> **SO ORDERED.**[81]
>
> ...

Petitioner then filed his MR[82] on the Amended Decision on 14 November 2019 (**MR on the Amended Decision**). He asked the

[76] Division Docket, Volume II, pp. 1219-1222.
[77] Id., pp. 1277-1281.
[78] Id., pp. 1226-1270, with annexes.
[79] *Per* Records Verification dated 11 July 2019, id., p. 1283.
[80] Supra at note 3.
[81] Emphasis in the original text.
[82] Division Docket, Volume II, pp. 1302-1307.

Special First Division to cancel and set aside its Amended Decision[83] and to reinstate its Original Decision.[84] Respondent filed *via* registered mail its Comment/Opposition[85] thereto on 23 December 2019.

In the Assailed Resolution dated 13 May 2020[86], the Special First Division denied petitioner's MR on the Amended Decision for lack of merit. The dispositive portion thereof reads:

> ...
>
> **WHEREFORE**, premises considered, [petitioner's] Motion for Reconsideration (Decision 18 October 2019) is **DENIED** for lack of merit.
>
> **SO ORDERED.**[87]
>
> ...

Undeterred, on 03 August 2020, petitioner filed *via* email the present Petition for Review[88] before the Court *En Banc* docketed as CTA EB No. 2295. Respondent filed *via* registered mail on 09 November 2020 its Comment/Opposition[89] thereto, which the Court *En Banc* noted in the Resolution dated 12 January 2021.[90]

Pursuant to Section II[91] of Administrative Matter (A.M.) No. 11-1-5-SC-PHILJA or the Interim Guidelines for Implementing Mediation in the Court of Tax Appeals, the Court *En Banc* referred the case to the Philippine Mediation Center – Court of Tax Appeals (**PMC-CTA**) for

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83 Supra at note 3.
84 Supra at note 5.
85 Id., pp. 1312-1318.
86 Supra at note 4.
87 Emphasis in the original text.
88 Supra at note 1; Received by the Court on 20 August 2020.
89 *Rollo*, pp. 96-102.
90 Id., pp. 127-128.
91 II. Referral to Mediation

The referral to mediation shall be made after the filing of the Comment in cases pending with the Court *En Banc* and, before or during the pre-trial for cases pending with the Court in Division.

A Resolution (FORM NO. 1) shall be issued by the Court *En Banc* or in Division, referring the covered civil case to mediation and requiring the parties to appear before the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) at a specified date and time. Said Resolution shall suspend the proceedings for the duration of the period of mediation stated in Section VIII below.

mediation.[92] However, the parties decided not to have their case mediated by the PMC-CTA.[93]

On 26 May 2021, the Court *En Banc* submitted the case for decision.[94]

ISSUES

In support of the present Petition for Review, petitioner assigns the following errors to the Special First Division's actions:

I.
THE SPECIAL FIRST DIVISION ERRED IN RULING THAT PETITIONER COMMISSIONER OF INTERNAL REVENUE VIOLATED RESPONDENT IZONE TECHNOLOGIES PHILIPPINES' RIGHT TO DUE PROCESS; AND,

II.
THE SPECIAL FIRST DIVISION ERRED IN CANCELLING THE FRINGE BENEFITS TAX (FBT) ASSESSMENT IN THE AMOUNT OF ₱195,199.14.

Before Us, petitioner argues that respondent's right to due process was not violated since it was duly notified of the assessments and was given ample time and opportunity to protest the findings against it. As to the issuance of the FANs[95] and the FLD[96] within the 15-day period to file a protest against the PAN, he claims that there was a mistake in the date indicated therein. Such a mistake would not be violative of due process given that respondent actually received the same on 10 April 2012 or after the said 15-day period.

[92] Supra at note 90.
[93] See No Agreement to Mediate dated 08 March 2021, *Rollo*, p. 129.
[94] See Resolution dated 26 May 2021, id., pp. 131-132.
[95] Supra at note 12.
[96] Supra at note 13.

Petitioner adds that despite the slight infirmity as regards the date of issuance of the FANs[97] and the FLD[98], this does not necessarily result in a violation of due process considering that respondent was (1) able to intelligently contest the PAN[99] and the FANs, (2) informed of the factual and legal bases of the assessment, and, (3) afforded an opportunity to defend itself.

Petitioner also notes that respondent's protest against the PAN[100] was only filed on 17 February 2012 or beyond the 15-day period to file a protest reckoned from the PAN's receipt on 09 January 2012 (*i.e.*, on or before 24 January 2012). Further, respondent's protest against the FANs[101] was only filed on 12 April 2013 or almost a year after the FANs' receipt on 10 April 2012. Since its protest against the FANs was not timely filed, respondent's administrative and judicial remedies have already prescribed.

Lastly, petitioner reiterates his argument in his MR on the Amended Decision[102] that the Special First Division erred in cancelling the deficiency FBT assessment in the amount of ₱195,199.14. While he admits that the deficiency FBT assessment was issued beyond the three-year prescriptive period, he maintains that this does not mean that the government is already barred from collecting respondent's tax deficiencies and that the government cannot and must not be estopped particularly in matters involving taxes.

On the other hand, in its Comment/Opposition[103], respondent reiterates his contention that its actual receipt of the FANs[104] and the FLD[105] (even after the 15-day period to protest the PAN[106]) is immaterial and does not cure the obvious violation of its right to due process. Section 3.1.1[107] of Revenue Regulations (**RR**) No. 12-99[108], as amended

97 Supra at note 12.
98 Supra at note 13.
99 Supra at note 9.
100 Id.
101 Supra at note 12.
102 Supra at note 82.
103 Supra at note 85.
104 Supra at note 12.
105 Supra at note 13.
106 Supra at note 9.
107 3.1.1 *Preliminary Assessment Notice (PAN).*
108 *Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-*

by RR No. 18-2013[109], mandates that petitioner affords taxpayers a 15-day period to respond before the FAN and the FLD are issued. Otherwise, taxpayers have no assurance of being heard on their protest to the PAN before petitioner makes his decision in the FAN and the FLD.

Respondent likewise disputes petitioner's claim that its protest was filed more than a year after receipt of the FANs[110] and the FLD[111], that is, only on 12 April 2013. Particularly, Exhibits "P-9" to "P-10"[112] clearly show that the BIR received its protest letters, both dated 12 April 2012, on even date as indicated in the receiving stamps. Respondent tried to correct the mistake in the Pre-Trial Order[113] pertaining to the year of receipt of its protest letters by filing a Manifestation with Motion to Correct[114] on 10 August 2016.

Moreover, respondent insists that the Special First Division did not err in cancelling the deficiency FBT assessment as it was issued beyond the three-year prescriptive period. Given that there is no agreement in writing between the parties as to such assessment after the three-year prescriptive period, the deficiency FBT assessment for TY 2008 is clearly void. Since no FBT is due, respondent further claims that the FBT it voluntarily paid should be refunded to it as the BIR's retention of the same amounts to unjust enrichment.

<u>RULING OF THE COURT *EN BANC*</u>

Before going into the merits of the case, We shall first resolve whether the Court *En Banc* has jurisdiction over the present petition.

Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

109 *Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*

110 Supra at note 12.

111 Supra at note 13.

112 Supra at note 15.

113 Supra at note 50.

114 Supra at note 51.

THE PRESENT PETITION FOR REVIEW WAS TIMELY FILED.

The Special First Division promulgated the Assailed Resolution[115] denying petitioner's MR on the Amended Decision[116] on 13 May 2020. Petitioner received the said Assailed Resolution on 02 July 2020.[117]

Under Section 2(a)(1)[118], Rule 4 in relation to Section 3(b)[119], Rule 8 of the RRCTA, petitioner had fifteen (15) days from 02 July 2020 or until 17 July 2020, within which to file an appeal before this Court.

On 16 July 2020, petitioner filed a "Motion for Extension of Time to File Petition for Review"[120], requesting for an additional period of 15 days from 17 July 2020 or until 01 August 2020, within which to file his Petition for Review. The Court *En Banc* granted the same in its Minute Resolution dated 20 July 2020.[121]

Accordingly, on 03 August 2020, petitioner timely filed the present Petition for Review.[122] Hence, the Court *En Banc* validly acquired jurisdiction.

We now proceed to the merits of the case.

A careful and closer look at the arguments set forth by petitioner in his present petition before Us readily reveals that the grounds relied upon and the matters raised herein are mere restatements of his

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115 Supra at note 4.
116 Supra at note 82.
117 See Notice of Resolution dated 18 June 2020 attached as Annex "D" to the present Petition for Review, *Rollo*, p. 76.
118 **SEC 2**. *Cases Within the Jurisdiction of the Court En Banc*. — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies — **Bureau of Internal Revenue**, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture[.] (Emphasis supplied.)
119 Supra at note 2.
120 *Rollo*, pp. 1-2.
121 Id., p. 3.
122 Within the extended period granted by the Court *En Banc* in the Minute Resolution dated 20 July 2020. Since 01 August 2020 falls on a Saturday, the due date shall be on the next business day, 03 August 2020.

previous arguments before the Special First Division. All these matters have already been exhaustively discussed and passed upon in the Amended Decision[123] and Assailed Resolution.[124]

Be that as it may, if only to further clarify the conclusions of the Special First Division, We adopt its pronouncements relative to the issues raised herein, as set out below.

I. REPONDENT'S RIGHT TO DUE PROCESS WAS VIOLATED WHEN PETITIONER PREMATURELY ISSUED THE FINAL ASSESSMENT NOTICE (FAN) AND THE FORMAL LETTER OF DEMAND (FLD).

Section 228 of the NIRC of 1997, as amended, provides the procedure for protesting of assessments, to wit:

> ...
> **SEC. 228.** *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a **preassessment notice** shall not be required in the following cases:
>
> (a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
>
> (b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
>
> (c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

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123 Supra at note 3.
124 Supra at note 4.

(d) When the excise tax due on exciseable articles has not been paid; or

(e) When the article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.[125]

...

The aforequoted provision is implemented by Section 3 of RR No. 12-99[126], as amended by RR No. 18-2013[127], which provides:

...

SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —

3.1 Mode of procedure in the issuance of a deficiency tax assessment:

3.1.1 *Preliminary Assessment Notice (PAN).* — If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based ...

If the taxpayer fails to respond <u>within fifteen (15) days from date of receipt of the PAN</u>, he shall be considered in default, in which case, a Formal Letter of Demand and Final

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125 Emphasis supplied.
126 Supra at note 108.
127 Supra at note 109.

> **Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.**
>
> **If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.**[128]
>
> ...

It is clear from the foregoing provisions that the issuance of the PAN, as well as giving the taxpayer 15 days from receipt thereof to respond to such notice, are part of due process in the issuance of tax assessments. Save in some instances, the CIR is required to issue a PAN. None of these instances is present in this case. If the taxpayer fails to respond to the PAN within the said 15-day period, the taxpayer shall be considered in default. It is only then that the CIR or his duly authorized representative can validly issue the FAN and the FLD. Otherwise stated, the CIR or his duly authorized representative is duty bound to wait for the expiration of the 15-day period from receipt of the PAN, before issuing the FAN and the FLD.

Relevantly, in *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*[129] (**Avon Products**), the Supreme Court held:

> ...
>
> The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise to submit comments or arguments with supporting documents at each stage in the assessment process. Due process requires the Bureau of Internal Revenue to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions. Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.
>
> ...

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128 Emphasis and underscoring supplied.

129 G.R. Nos. 201398-99, 03 October 2018; Citations omitted and emphasis supplied.

> ... Again, under Section 228 of the Tax Code and **Section 3.1.2 of Revenue Regulations No. 12-99, the taxpayer is required to respond within 15 days from receipt of the Preliminary Assessment Notice**; otherwise, he or she will be considered in default and the Final Letter of Demand and Final Assessment Notices will be issued. ...
>
> ...
>
> However, **within just two (2) weeks from receipt of Avon's protest letter, the Commissioner issued the Final Letter of Demand and Final Assessment Notices**, reiterating the findings stated in the Preliminary Assessment Notice. ...
>
> ...
>
> This Court has, in several cases, declared void any assessment that failed to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulation No. 12-99.
>
> ...

The principles laid down in *Avon Products* as regards the observance of due process in the issuance of assessments to taxpayers was reiterated in the more recent case of *Commissioner of Internal Revenue v. Nippo Metal Tech Phils., Inc. (formerly Global Metal Tech Corporation)*[130] (**Nippo Metal**).

In *Nippo Metal*, the CIR issued the FLD/FAN to Nippo Metal without waiting for the lapse of the 15-day period to respond to the PAN. The Supreme Court held, as follows:

> ...
>
> Clearly, due process demands that the taxpayer receives the PAN **<u>and</u>** that he is given the opportunity to respond thereto. Moreover, in *CIR v. Avon Products Manufacturing, Inc.*, the Court even went beyond 'opportunity to be heard' as an aspect of due process. In said case, the Court, reiterating *Ang Tibay v. The Court of Industrial Relations*, held that '[n]ot only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts ***but the [CIR] must consider the evidence presented***.'
>
> ...

[130] G.R. No. 227616, 19 June 2019.

> ... **By disregarding the 15-day period provided by law, the CIR utterly deprived respondent of the opportunity to contest the PAN and present evidence in support thereto before an FLD/FAN was issued.**[131]
>
> ...

In herein case, the parties admitted in their pleadings (*i.e.*, Petition for Review[132], Answer[133], Pre-Trial Briefs[134]) and during the Pre-Trial Conference[135] held on 11 February 2016 that respondent received the PAN[136] on 09 January 2012.[137] Respondent thus had until 24 January 2012 within which to file its reply thereto. However, as the records show, petitioner issued the FLD[138] dated 05 January 2012 and the four (4) FANs[139], all dated 13 January 2012, without waiting for respondent's reply to the PAN or at least the expiration of the 15-day period provided by law.

Notably, even prior to respondent's receipt of the PAN[140] and the lapse of the 15-day period for respondent to file its protest against the PAN, petitioner already issued the subject FLD[141] on 05 January 2012. In this regard, it must be noted that the date of respondent's actual receipt of the FLD on 10 April 2012 is of no consequence. Instead, what is material is the date of issuance of the FLD because that shows petitioner's non-observance of the 15-day period given to respondent to file a protest and be heard on its defenses before the final assessment was issued against it. As such, as respondent correctly pointed out, the belated filing of its reply to the PAN on 17 February 2012 is immaterial and does not cure the apparent violation of its right to due process.

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131 Supra; Citations omitted, emphasis, italics and underscoring in the original text and supplied.
132 Supra at note 18.
133 Supra at note 22.
134 Supra at notes 42 and 43.
135 Supra at note 44.
136 Supra at note 9.
137 See Amended Pre-Trial Order, supra at note 59.
138 Supra at note 13.
139 Supra at note 12.
140 Supra at note 9.
141 Supra at note 13.

With the above disquisition, we thus uphold the Special First Division's finding that the FANs[142] and the FLD[143] were issued prematurely and respondent was deprived of the opportunity to be heard on the PAN[144], in clear violation of the due process requirement in the issuance of tax assessments. Consequently, the FANs and the FLD are void and the deficiency tax assessments contained therein bear no valid fruit and must not be given any effect.[145]

II. THE SPECIAL FIRST DIVISION DID NOT ERR IN CANCELLING THE SUBJECT DEFICIENCY FRINGE BENEFITS TAX (FBT) ASSESSMENT DUE TO PRESCRIPTION.

In the Original Decision[146], the Special First Division cancelled the deficiency FBT assessment for being issued way beyond the three-year prescriptive period under Section 203[147] of the NIRC of 1997, as amended.

Subsequently, in the Assailed Resolution[148], the Special First Division found it unnecessary to again discuss the issue of whether the cancellation of the deficiency FBT assessment was proper considering that petitioner merely reiterated his arguments which have already been duly considered and adequately passed upon in the Original Decision[149] and the Amended Decision.[150]

Nevertheless, for emphasis, We will discuss this issue anew to further clarify the Special First Division's ruling.

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142 Supra at note 12.
143 Supra at note 13.
144 Supra at note 9.
145 Refer to *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation,* G.R. No. 215534, 18 April 2016; *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, 08 December 2010; and *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. No. 197945, 09 July 2018.
146 Supra at note 5.
147 **SEC. 203**. *Period of Limitation Upon Assessment and Collection.*
148 Supra at note 4.
149 Supra at note 5.
150 Supra at note 3.

Sections 203 and 222(b) of the NIRC of 1997, as amended, state the periods of limitation upon the assessment of taxes, to wit:

> ...
>
> **SEC. 203.** *Period of Limitation Upon Assessment and Collection.* — Except as provided in Section 222, **internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return**, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.
>
> ...
>
> **SEC. 222.** *Exceptions as to the Period of Limitation of Assessment and Collection of Taxes.* —
>
> ...
>
> (b) **<u>If before the expiration of the time prescribed in Section 203 for the assessment of the tax</u>, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon**. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.[151]
>
> ...

Based on the aforequoted Section 203, taxpayers may be assessed of taxes for a period of three (3) years from the last day prescribed by law for the filing of the return or the actual filing thereof, which comes later. However, Section 222(b) authorizes the extension of the said three-year prescriptive period by the execution of a valid waiver, where the taxpayer and the CIR may stipulate to extend the period of assessment by a written agreement executed prior to the lapse of the period prescribed by law, and by subsequent written agreements before the expiration of the period previously agreed upon.[152] In other words, for a waiver of the statute of limitations to be valid, it must be

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151 Emphasis and underscoring supplied.

152 *Commissioner of Internal Revenue v. Standard Chartered Bank*, G.R. No. 192173, 29 July 2015.

executed before the expiration of the ordinary prescriptive period for assessment.[153]

In *SMI-Ed Philippines Technology, Inc. v. Commissioner of Internal Revenue*[154], the Supreme Court explained the primary reason behind the prescriptive period on the CIR's right to assess or collect internal revenue taxes, *i.e.*, to safeguard the interests of taxpayers from unreasonable investigation. Accordingly, the government must assess internal revenue taxes on time so as not to extend indefinitely the period of assessment and deprive the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of a reasonable period of time.[155]

In this case, We sustain the Special First Division's finding that the last day for petitioner to issue an assessment on respondent's FBT for the 1st quarter of TY 2008 was on **10 April 2011** (reckoned from date of filing and payment of the FBT on 09 April 2008[156]). Clearly, on this basis, the FANs[157] and the FLD[158] assessing respondent for deficiency FBT in the amount of ₱195,199.14, which respondent received on **10 April 2012**, was issued beyond the three-year prescriptive period.

As regards petitioner's claim that the government cannot be estopped in matters involving taxes, it must be pointed out that the doctrine of estoppel cannot be applied as an exception to the statute of limitations on the assessment of taxes considering that there is a detailed procedure for the proper execution of the waiver, which the BIR must strictly follow.[159] More so, in this case, where no waiver was executed to extend the period of assessment.

Accordingly, We find no cogent reason to reverse the cancellation of petitioner's deficiency FBT assessment against respondent.

153 *Bank of the Philippine Islands v. Commissioner of Internal Revenue*, G.R. No. 139736, 17 October 2005.
154 G.R. No. 175410, 12 November 2014.
155 Id.
156 Exhibits "P-14" and "P-15", Division Docket, Volume I, pp. 423-424.
157 Supra at note 12.
158 Supra at note 13.
159 See *Commissioner of Internal Revenue v. Kudos Metal Corporation*, G.R. No. 178087, 05 May 2010.

III. RESPONDENT IS NOT ENTITLED TO A REFUND OF THE FRINGE BENEFITS TAX (FBT) IT PAID FOR THE 1ST QUARTER OF THE TAXABLE YEAR (TY) 2008.

Lastly, there is no merit to respondent's claim that the Special First Division should have awarded a refund in its favor upon the cancellation of the deficiency FBT assessment for the 1st quarter of TY 2008, the amount of which allegedly pertains to what it had already paid in 2008.

In this regard, We affirm the Special First Division's finding in the Assailed Resolution[160] that respondent is not entitled to the refund of erroneously or illegally collected tax because it failed to comply with the requisites under Sections 204(C) and 229 of the NIRC of 1997, as amended. These provisions govern the procedure for the refund or recovery of erroneously collected internal revenue taxes, to wit:

> ...
>
> **SEC. 204.** *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —
>
> ...
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund.
>
> ...
>
> **SEC. 229.** *Recovery of Tax Erroneously or Illegally Collected.* — **No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected,** or of

160 Supra at note 4.

> any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, **until a claim for refund or credit has been duly filed with the Commissioner**; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment**: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.[161]
>
> ...

The foregoing provisions govern all kinds of refund or credit of internal revenue taxes collected erroneously or illegally, pursuant to the NIRC of 1997, as amended. Section 204(C) applies to administrative claims filed with the BIR, while Section 229 refers to judicial actions for the recovery of the tax. Both sections mandatorily require the filing of administrative and judicial claims within two (2) years from the date of payment of the tax.

It is noted that the records are wanting of proof that administrative and judicial claims for refund were filed within two (2) years after the payment of the FBT for the 1st quarter of TY 2008 and before the prior Petition for Review to appeal the deficiency FBT assessment covering the same taxable period. As such, considering that the timely filing of administrative and judicial claims for refund is mandatory to recover under Sections 204(C) and 229 of the NIRC of 1997, as amended, the Special First Division did not err in not awarding a refund to respondent when it cancelled the subject deficiency FBT.

Even assuming *arguendo* that the filing of administrative and judicial claims for refund is not indispensable and a refund may be awarded through the present petition, respondent nevertheless failed to establish that the FBT it paid in 2008 was erroneously or illegally paid.

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161 Emphasis supplied.

On this score, the Special First Division correctly noted that the FBT return for the 1st quarter of TY 2008 was filed and the corresponding FBT was paid on 09 April 2008[162], while the deficiency FBT assessment was issued on 05 January 2012 *per* FLD. Evidently, the subject FBT payment in 2008 was made not in payment of the deficiency FBT assessment (which the Special First Division cancelled due to prescription) but pursuant to respondent's self-assessment.

In *Commissioner of Internal Revenue v. Fitness by Design, Inc.*[163], the Supreme Court distinguished the CIR's assessment from the taxpayer's self-assessment, as follows:

> ...
>
> An assessment "refers to the determination of amounts due from a person obligated to make payments." "In the context of national internal revenue collection, it refers to the determination of the taxes due from a taxpayer under the National Internal Revenue Code of 1997."
>
> **The assessment process starts with the filing of tax return and payment of tax by the taxpayer. The initial assessment evidenced by the tax return is a self-assessment of the taxpayer. The tax is primarily computed and voluntarily paid by the taxpayer without need of any demand from government.** If tax obligations are properly paid, the Bureau of Internal Revenue may dispense with its own assessment.
>
> After filing a return, the Commissioner or his or her representative may allow the examination of any taxpayer for assessment of proper tax liability. The failure of a taxpayer to file his or her return will not hinder the Commissioner from permitting the taxpayer's examination. The Commissioner can examine records or other data relevant to his or her inquiry in order to verify the correctness of any return, or to make a return in case of noncompliance, as well as to determine and collect tax liability.
>
> ...

The requirement to pay any tax under the NIRC of 1997, as amended, may arise from either of two (2) specific instances: *first*, upon being required by the same law to pay a particular tax,

162 Supra at note 156.
163 G.R. No. 215957, 09 November 2016; Citations omitted and emphasis supplied.

simultaneous with the filing of the pertinent tax return; or *second*, upon being informed of a tax assessment issued by the BIR, requiring the taxpayer to pay the assessed tax within a specific period as set forth in the said tax assessment.

It is the taxpayer's responsibility to determine its tax liability, file the appropriate tax return and pay the tax due, if any, without need of any demand from the government. The CIR or his duly authorized representative thus issues a tax assessment only when the tax obligation is not properly paid.

Thus, when respondent paid the subject FBT, it did so based on its own determination of the amount of tax due evidenced by the pertinent tax return filed (*i.e.*, BIR Form No. 1603 for the 1st quarter of TY 2008). The logical conclusion therefore is that respondent's FBT payment for the 1st quarter of TY 2008 was deemed properly paid when the Special First Division cancelled petitioner's deficiency FBT assessment due to prescription.

It is also worth noting that the Special First Division only ruled upon whether petitioner still has the right to assess respondent for deficiency FBT and not whether respondent is liable for FBT for the 1st quarter of TY 2008.

In fine, it was patently erroneous for respondent to construe the cancellation of the deficiency FBT assessment (issued in 2012) as a basis to claim a refund of the FBT (paid in 2008) in the present petition.

WHEREFORE, premises considered, the instant Petition for Review filed by petitioner Commissioner of Internal Revenue is hereby **DENIED** for lack of merit. Accordingly, the Amended Decision and Assailed Resolution dated 18 October 2019 and 13 May 2020, respectively, in CTA Case No. 8696, entitled *Izone Technologies Philippines v. Commissioner of Internal Revenue*, are hereby **AFFIRMED.**

Consequently, petitioner Commissioner of Internal Revenue or any person duly acting on his or her behalf is hereby **ENJOINED** from collecting or taking further action on the deficiency taxes assessed against respondent Izone Technologies Philippines as provided in the Final Assessment Notices and the Formal Letter of Demand in the aggregate amount of ₱1,005,217.37 for the taxable year 2008.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice